

**Effective 5/10/2016**

**61-2c-301 Prohibited conduct -- Violations of the chapter.**

- (1) A person transacting the business of residential mortgage loans in this state may not:
- (a) give or receive a referral fee;
  - (b) charge a fee in connection with a residential mortgage loan transaction:
    - (i) that is excessive; or
    - (ii) without providing to the loan applicant a written statement signed by the loan applicant:
      - (A) stating whether or not the fee or deposit is refundable; and
      - (B) describing the conditions, if any, under which all or a portion of the fee or deposit will be refunded to the loan applicant;
  - (c) act incompetently in the transaction of the business of residential mortgage loans such that the person fails to:
    - (i) safeguard the interests of the public; or
    - (ii) conform to acceptable standards of the residential mortgage loan industry;
  - (d) do any of the following as part of a residential mortgage loan transaction, regardless of whether the residential mortgage loan closes:
    - (i) make a false statement or representation;
    - (ii) cause false documents to be generated; or
    - (iii) knowingly permit false information to be submitted by any party;
  - (e) give or receive compensation or anything of value, or withhold or threaten to withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in reaching a value conclusion in a residential mortgage loan transaction, except that it is not a violation of this section for a licensee to withhold payment because of a bona fide dispute regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards of Professional Appraisal Practice;
  - (f) violate or not comply with:
    - (i) this chapter;
    - (ii) an order of the commission or division; or
    - (iii) a rule made by the division;
  - (g) fail to respond within the required time period to:
    - (i) a notice or complaint of the division; or
    - (ii) a request for information from the division;
  - (h) make false representations to the division, including in a licensure statement;
  - (i) for a residential mortgage loan transaction beginning on or after January 1, 2004, engage in the business of residential mortgage loans with respect to the transaction if the person also acts in any of the following capacities with respect to the same residential mortgage loan transaction:
    - (i) appraiser;
    - (ii) escrow agent;
    - (iii) real estate agent;
    - (iv) general contractor; or
    - (v) title insurance producer;
  - (j) engage in unprofessional conduct as defined by rule;
  - (k) engage in an act or omission in transacting the business of residential mortgage loans that constitutes dishonesty, fraud, or misrepresentation;
  - (l) engage in false or misleading advertising;
  - (m)
    - (i) fail to account for money received in connection with a residential mortgage loan;

- (ii) use money for a different purpose from the purpose for which the money is received; or
- (iii) except as provided in Subsection (4), retain money paid for services if the services are not performed;
- (n) fail to provide a prospective borrower a copy of each appraisal and any other written valuation developed in connection with an application for credit that is to be secured by a first lien on a dwelling in accordance with Subsection (5);
- (o) engage in an act that is performed to:
  - (i) evade this chapter; or
  - (ii) assist another person to evade this chapter;
- (p) recommend or encourage default, delinquency, or continuation of an existing default or delinquency, by a mortgage applicant on an existing indebtedness before the closing of a residential mortgage loan that will refinance all or part of the indebtedness;
- (q) in the case of the lending manager of an entity or a branch office of an entity, fail to exercise reasonable supervision over the activities of:
  - (i) unlicensed staff; or
  - (ii) a mortgage loan originator who is affiliated with the lending manager;
- (r) pay or offer to pay an individual who does not hold a license under this chapter for work that requires the individual to hold a license under this chapter;
- (s) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
  - (i) provide a title insurance product or service without the approval required by Section 31A-2-405; or
  - (ii) knowingly provide false or misleading information in the statement required by Subsection 31A-2-405(2);
- (t) represent to the public that the person can or will perform any act of a mortgage loan originator if that person is not licensed under this chapter because the person is exempt under Subsection 61-2c-102(1)(h)(ii)(A), including through:
  - (i) advertising;
  - (ii) a business card;
  - (iii) stationery;
  - (iv) a brochure;
  - (v) a sign;
  - (vi) a rate list; or
  - (vii) other promotional item;
- (u)
  - (i) engage in an act of loan modification assistance without being licensed under this chapter;
  - (ii) engage in an act of foreclosure rescue that requires licensure as a real estate agent or real estate broker under Chapter 2, Division of Real Estate, without being licensed under that chapter;
  - (iii) engage in an act of loan modification assistance without entering into a written agreement specifying which one or more acts of loan modification assistance will be completed;
  - (iv) request or require a person to pay a fee before obtaining:
    - (A) a written offer for a loan modification from the person's lender or servicer; and
    - (B) the person's written acceptance of the offer from the lender or servicer;
  - (v) induce a person seeking a loan modification to hire the licensee to engage in an act of loan modification assistance by:
    - (A) suggesting to the person that the licensee has a special relationship with the person's lender or loan servicer; or
    - (B) falsely representing or advertising that the licensee is acting on behalf of:

- (I) a government agency;
    - (II) the person's lender or loan servicer; or
    - (III) a nonprofit or charitable institution;
  - (vi) recommend or participate in a loan modification that requires a person to:
    - (A) transfer title to real property to the licensee or to a third-party with whom the licensee has a business relationship or financial interest;
    - (B) make a mortgage payment to a person other than the person's loan servicer; or
    - (C) refrain from contacting the person's:
      - (I) lender;
      - (II) loan servicer;
      - (III) attorney;
      - (IV) credit counselor; or
      - (V) housing counselor; or
  - (vii) for an agreement for loan modification assistance entered into on or after May 11, 2010, engage in an act of loan modification assistance without offering in writing to the person entering into the agreement for loan modification assistance a right to cancel the agreement within three business days after the day on which the person enters the agreement;
  - (v) sign or initial a document on behalf of another person, except for in a circumstance allowed by the division by rule, with the concurrence of the commission, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or
  - (w) violate or fail to comply with a provision of Title 57, Chapter 28, Utah Reverse Mortgage Act.
- (2) Whether or not the crime is related to the business of residential mortgage loans, it is a violation of this chapter for a licensee or a person who is a certified education provider to do any of the following with respect to a criminal offense that involves moral turpitude:
- (a) be convicted;
  - (b) plead guilty or nolo contendere;
  - (c) enter a plea in abeyance; or
  - (d) be subjected to a criminal disposition similar to the ones described in Subsections (2)(a) through (c).
- (3) A lending manager does not violate Subsection (1)(q) if:
- (a) in contravention of the lending manager's written policies and instructions, an affiliated licensee of the lending manager violates:
    - (i) this chapter; or
    - (ii) rules made by the division under this chapter;
  - (b) the lending manager established and followed reasonable procedures to ensure that affiliated licensees receive adequate supervision;
  - (c) upon learning of a violation by an affiliated licensee, the lending manager attempted to prevent or mitigate the damage;
  - (d) the lending manager did not participate in or ratify the violation by an affiliated licensee; and
  - (e) the lending manager did not attempt to avoid learning of the violation.
- (4) Notwithstanding Subsection (1)(m)(iii), a licensee may, upon compliance with Section 70D-2-305, charge a reasonable cancellation fee for work done originating a mortgage if the mortgage is not closed.
- (5)
- (a) Except as provided in Subsection (5)(b), a person transacting the business of residential mortgage loans in this state shall provide a prospective borrower a copy of each appraisal and any other written valuation developed in connection with an application for credit that is to be secured by a first lien on a dwelling on or before the earlier of:

- (i) as soon as reasonably possible after the appraisal or other valuation is complete; or
  - (ii) three business days before the day of the settlement.
- (b) Subject to Subsection (5)(c), unless otherwise prohibited by law, a prospective borrower may waive the timing requirement described in Subsection (5)(a) and agree to receive each appraisal and any other written valuation:
  - (i) less than three business days before the day of the settlement; or
  - (ii) at the settlement.
- (c)
  - (i) Except as provided in Subsection (5)(c)(ii), a prospective borrower shall submit a waiver described in Subsection (5)(b) at least three business days before the day of the settlement.
  - (ii) Subsection (5)(b) does not apply if the waiver only pertains to a copy of an appraisal or other written valuation that contains only clerical changes from a previous version of the appraisal or other written valuation and the prospective borrower received a copy of the original appraisal or other written valuation at least three business days before the day of the settlement.
- (d) If a prospective borrower submits a waiver described in Subsection (5)(b) and the transaction never completes, the person transacting the business of residential mortgage loans shall provide a copy of each appraisal or any other written valuation to the applicant no later than 30 days after the day on which the person knows the transaction will not complete.

Amended by Chapter 384, 2016 General Session